IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.34 of 1999
Date of decision: 06.12.2006

M/s New Sachdev Steel Industries, Jaitu.

-----Applicant

Vs.

The Commissioner of Income-tax, Patiala.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Advocate
for the assessee.

Dr. N.L. Sharda, Advocate
for the revenue.

ORDER:

At the instance of the assessee, following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 23.02.1998 in I.T.A. No.891(ASR)/ 1991 in respect of assessment year 1987-88:-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that penalty initiated u/s 271-B after the completion of the assessment proceeding was right in law?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that penalty imposed is not barred by limitation in view of section 275 of the I.T. Act, 1961?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that just not putting the date on the audit report, the date of filing of the return is the date of obtaining the audit report and ignoring the certificate issued by the Chartered Accountants regarding the singing of the date of audit report?

4. Whether, on the facts and in the circumstances of the case, the ITAT is right in law in not giving finding on the case law stated by the appellant and decided the case on the grounds which has neither argued nor submitted by the respondent?"

It is not disputed before us that the issue stands covered against the revenue by the judgment of this Court in ***Income-Tax Officer v. Kaysons India*** (2000) 246 ITR 489. After considering the relevant provisions, this Court observed at page 492:-

> "It is, therefore, evident that the default or failure to file the return along with the audit report on or before the specified date is not hit by the provisions of section 271B. It is not the case of the Revenue that the assessee has failed to get the accounts audited or has failed to obtain the report of such audit in terms of section 44AB before the specified date. It is also evident that no return had been filed either under sub-section (1) of section 139 or in response to any notice under clause (i) of sub-section (1) of section 142 and as such there could possibly be no default of not furnishing the audit report along with such a non-existent return. The return under sub-section (1) of section 139 in this case could be filed up to November 30, 1990. However, the assessee had filed the return on December 31, 1990, which was a return filed under sub-section (4) of section 139 and this return was duly accompanied by the audit report obtained by the assessee in accordance with the provisions of section 44AB. Thus, according to us, the default for which penalty had been levied was not covered by the provisions of section 271B and the Commissioner of Income-tax (Appeals and the Tribunal were justified in holding that no penalty was leviable."

Accordingly, the question is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

December 06, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**